

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

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ALGONQUIN CAPITAL MANAGEMENT, LLC,  
A Connecticut Limited Liability Company,

Plaintiff,

- against -

JOSEPH MACEDA,

Defendant.  
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Civil Action Number: 07-cv-7522

**VERIFIED AMENDED ANSWER  
TO FIRST AMENDED COMPLAINT**

Defendant, JOSEPH MACEDA, by his attorneys WHITE, CIRRITO & NALLY, LLP,  
as and for his Verified Amended Answer to Plaintiff's First Amended Complaint, states as  
follows:

**AS TO THE PRELIMINARY STATEMENT and PARTIES**

FIRST: Denies knowledge or information sufficient to form a belief as to the  
allegations contained in Paragraphs numbered "1" and "2" of the Complaint.

**AS TO JURISDICTION and VENUE**

SECOND: Denies knowledge or information sufficient to form a belief as to the  
allegations contained in Paragraphs numbered "5" and "6" of the Complaint.

THIRD: Denies each and every allegation contained in Paragraph "4" of the  
Complaint.

**AS TO THE BACKGROUND FACTS**

FOURTH: Denies knowledge or information sufficient to form a belief as to the  
allegations contained in Paragraphs numbered "7" and "8" of the Complaint.

FIFTH: Denies each and every allegation contained in Paragraphs "9", "10" and "11"  
of the Complaint.

**AS TO COUNT ONE- Breach of Contract**

SIXTH: Defendant repeats, reiterates and realleges each and every admission and  
denial to paragraphs numbered "1" through "11", with the same force and affect as though  
the same were set forth at length herein.

SEVENTH: Denies each and every allegation contained in Paragraphs "13", "14"  
and "15" of the Complaint.

**AS TO COUNT TWO- Breach of Guaranty**

EIGHTH: Defendant repeats, reiterates and realleges each and every admission and denial to paragraphs numbered "1" through "11" and "12" through "15", with the same force and affect as though the same were set forth at length herein.

NINTH: Denies each and every allegation contained in Paragraphs numbered "17", "18" and "19" of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

TENTH: The instant case cannot be maintained by the Plaintiff ALGONQUIN CAPITAL MANAGEMENT, LLC, A Connecticut Limited Liability Company in that Plaintiff is not authorized to do business in the State of New York as required by Section 206 of the New York State Limited Liability Company Law.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

ELEVENTH: The Complaint warrants dismissal in that the maintenance of this action is duplicative of other actions commenced in the United States District Court for the Southern District of New York and the New York State Supreme Court for the County of Westchester.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

TWELFTH: The Complaint should be dismissed in that it is barred by the applicable Statute of Limitations.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

THIRTEENTH: The Complaint should be dismissed in that the Plaintiff was paid for the liability asserted against the Defendant by reason of the acquisition of certain property under the bankruptcy proceeding in the United States Bankruptcy Court of the Southern District of New York, **In Re: Ocean Power Corporation**, Docket number 02-15989.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

FOURTEENTH: The Complaint should be dismissed under the doctrine of accord and satisfaction.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

FIFTEENTH: The Complaint should be dismissed in that the Court lacks diversity of jurisdiction under 28 USC 1332.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

SIXTEENTH: The Complaint should be dismissed in that the alleged guaranty of payment by the Defendant to the Plaintiff is barred by the Statute of Frauds under General Obligations Law Section 5-701(2) and (5).

**WHEREFORE**, the Defendant JOSEPH MACEDA, demands judgment dismissing the Complaint, together with the costs, disbursements and attorneys' fees herein, and for such other and further relief as to this Court may seem just and proper.

Dated: Hempstead, NY  
November 11, 2007

WHITE, CIRRITO & NALLY, LLP

By: \_\_\_\_\_  
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